

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DISH NETWORK L.L.C. F/K/A EHOSTAR
SATELLITE L.L.C.,

Plaintiffs,

v.

ESPN, INC. and ESPN CLASSIC, INC.,

Defendants.
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:
: 09-CIV-6875 (JGK) (FM)
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: **AMENDED**
: **CONFIDENTIALITY**
: **STIPULATION AND**
: **PROTECTIVE ORDER**
: **GOVERNING CERTAIN**
: **INFORMATION PROVIDED**
: **SOLELY FOR SETTLEMENT**
: **PURPOSES**

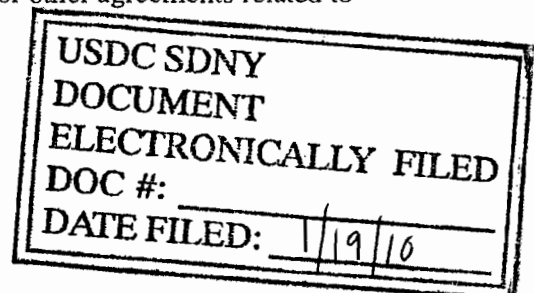
Whereas, the parties in the above captioned matter appeared for a January 8, 2010 settlement conference before the Honorable Frank Maas, United States Magistrate Judge;

Whereas, in advance of that settlement conference, the parties signed a Confidentiality Stipulation and Protective Order Governing Certain Information Provided Solely for Settlement Purposes on December 22, 2009, so ordered by Judge Maas on December 23, 2009, providing for the exchange of certain materials, solely for purposes of the settlement conference, on an "Outside Counsel Eyes Only" basis;

Whereas, in connection with the January 8, 2010 proceedings before Judge Maas, it became apparent to the Court that in order to facilitate further settlement discussions, certain materials previously provided by Defendants to Plaintiff on an "Outside Counsel Eyes Only" basis (the "Previously Exchanged Materials") would need to be disclosed to Jeffrey Blum and Brett Kitei, solely for the purpose of the settlement conference;

Whereas, it has been represented to the Court by Plaintiff Dish Network L.L.C. ("Dish") that Messrs. Blum and Kitei are in-house lawyers at Dish actively involved in this litigation and have no responsibility for negotiating licensing or other agreements related to telecasting content on behalf of Dish;

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Whereas, Judge Maas has ordered the parties to appear at a further settlement conference in February, 2010;

Whereas, confidential and proprietary business information of certain third parties may be among the materials exchanged between the parties;

Whereas, the parties have agreed that the January 8, 2010 settlement conference, as continued by order of Judge Maas, and all communications between the parties in connection with the continuing settlement conference, shall be governed by Rule 408 of the Federal Rules of Evidence; and

IT IS HEREBY ORDERED THAT:

1. The Previously Exchanged Materials shall be designated as follows:
“Highly Restricted Confidential – Provided Solely For Settlement Purposes.”
2. The materials designated “Highly Restricted Confidential – Provided Solely For Settlement Purposes,” and the contents thereof, shall be produced and disclosed in unredacted form to outside counsel for Dish, Flemming Zulack Williamson and Zauderer LLP, and further to Jeffrey Blum and Brett Kitei, and shall not be further disclosed by any of them to any other person or entity. Nothing herein, however, is meant to restrict Defendants from utilizing or disclosing their own information or documents as they see fit.
3. Materials designated “Highly Restricted Confidential – Provided Solely For Settlement Purposes,” and the contents thereof, shall be used by outside counsel for the parties, as well as Jeffrey Blum and Brett Kitei, solely in connection with the continuing settlement conference. These materials shall not be used for any other purpose, including, but not limited to, any business, commercial or competitive purpose.

4. Within five (5) business days of the conclusion of the continuing settlement conference which will occur when the referral to Judge Maas for the purpose of settlement concludes, all parties will return to the producing party or destroy any document, and any and all paper copies of any document, designated as “Highly Restricted Confidential – Provided Solely For Settlement Purposes,” or “Outside Counsel Eyes’ Only – Provided Solely For Settlement Purposes.” All electronic copies of any such documents shall be destroyed within five (5) business days of the conclusion of the continuing settlement conference.

5. The continuing settlement conference and all discussions or communications between the parties in connection with the continuing settlement conference shall be governed by Rule 408 of the Federal Rules of Evidence, and shall not be used or be admissible as evidence in the above referenced proceeding, or any other action or proceeding, including the prior state court litigation pending in New York State Supreme Court.

6. Nothing in this Order shall constitute: (a) an agreement to produce in discovery any testimony, document (including but not limited to any of the confidential materials governed by this amended stipulation and protective order) or other information not otherwise agreed upon herein or required by subsequent court order; (b) waiver of any right to object to or seek a modification of this protective order or a different order with respect to discovery or other matter (including but not limited to any of the confidential materials governed by this amended stipulation and protective order) in this or any other litigation; or (c) a waiver of any claim or immunity, protection, or privilege with respect to any testimony, document or information (including but not limited to any of the confidential materials governed by this amended stipulation and protective order).

Dated: January 13, 2010
New York, New York

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SO ORDERED:

Dated: January 13, 2010


Hon. Frank Maas
United States Magistrate Judge